

## UNITED STATES DISTRICT COURT

## DISTRICT OF NEVADA

\* \* \*

EFREN SANTIAGO LEFRANC,

Case No. 3:24-cv-00275-MMD-CSD

Plaintiff,

v.

SCREENING ORDER

ELKO SHERIFF'S OFFICE, *et al.*,

Defendants.

**I. SUMMARY**

*Pro se* Plaintiff Efren Santiago Lefranc, who is in custody at the Sumter County Detention Center in Florida, has submitted a document that appears to be a civil-rights complaint under 42 U.S.C. § 1983 and has filed an application to proceed *in forma pauperis* ("IFP"). (ECF Nos. 1-1 ("Complaint"), 1.) The Court now screens Lefranc's Complaint under 28 U.S.C. § 1915A, dismisses this action, and denies his IFP application as moot.

**II. SCREENING STANDARD**

Federal courts must conduct a preliminary screening in any case in which an incarcerated person seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the Court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted, or seek monetary relief from a defendant who is immune from such relief. See *id.* §§ 1915A(b)(1), (2). *Pro se* pleadings, however, must be liberally construed. See *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) the violation of a right secured by the Constitution or laws of the United States; and (2) that the alleged violation was committed by a person acting under color

1 of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

2 In addition to the screening requirements under § 1915A, the Prison Litigation  
 3 Reform Act (“PLRA”) requires a federal court to dismiss an incarcerated person’s claim if  
 4 “the allegation of poverty is untrue” or if the action “is frivolous or malicious, fails to state  
 5 a claim on which relief may be granted, or seeks monetary relief against a defendant who  
 6 is immune from such relief.” 28 U.S.C. § 1915(e)(2) (cleaned up). Dismissal of a complaint  
 7 for failure to state a claim upon which relief can be granted is provided for in Federal Rule  
 8 of Civil Procedure 12(b)(6), and the Court applies the same standard under § 1915 when  
 9 reviewing the adequacy of a complaint or an amended complaint. When a court dismisses  
 10 a complaint under § 1915(e), the plaintiff should be given leave to amend the complaint  
 11 with directions as to curing its deficiencies, unless it is clear from the face of the complaint  
 12 that the deficiencies could not be cured by amendment. See *Cato v. United States*, 70  
 13 F.3d 1103, 1106 (9th Cir. 1995), *superseded on other grounds by* 28 U.S.C. § 1915(e).

14 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See  
 15 *Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to  
 16 state a claim is proper only if the plaintiff clearly cannot prove any set of facts in support  
 17 of the claim that would entitle him or her to relief. See *Morley v. Walker*, 175 F.3d 756,  
 18 759 (9th Cir. 1999). In making this determination, the Court takes as true all allegations  
 19 of material fact stated in the complaint, and the Court construes them in the light most  
 20 favorable to the plaintiff. See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996).  
 21 Allegations of a pro se complainant are held to less stringent standards than formal  
 22 pleadings drafted by lawyers. See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While the  
 23 standard under Rule 12(b)(6) does not require detailed factual allegations, a plaintiff must  
 24 provide more than mere labels, conclusions, or a formulaic recitation of the claim’s  
 25 elements. See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

26 A reviewing court should “begin by identifying pleadings [allegations] that, because  
 27 they are no more than conclusions, are not entitled to the assumption of truth.” *Ashcroft*  
 28 *v. Iqbal*, 556 U.S. 662, 679 (2009). “While legal conclusions can provide the framework

1 of a complaint, they must be supported by factual allegations.” *Id.* “When there are well-  
 2 pleaded factual allegations, a court should assume their veracity and then determine  
 3 whether they plausibly give rise to an entitlement to relief.” *Id.* “Determining whether a  
 4 complaint states a plausible claim for relief . . . [is] a context-specific task that requires  
 5 the reviewing court to draw on its judicial experience and common sense.” *Id.*

6 Finally, all or part of a complaint filed by an incarcerated person may be dismissed  
 7 *sua sponte* if that person’s claims lack an arguable basis either in law or in fact. This  
 8 includes claims based on legal conclusions that are untenable, like claims against  
 9 defendants who are immune from suit or claims of infringement of a legal interest that  
 10 clearly does not exist, as well as claims based on fanciful factual allegations, like fantastic  
 11 or delusional scenarios. See *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989),  
 12 superseded on other grounds by 28 U.S.C. § 1915(e). See also *McKeever v. Block*, 932  
 13 F.2d 795, 798 (9th Cir. 1991).

### 14 **III. SCREENING OF COMPLAINT**

#### 15 **A. Factual Allegations**

16 Lefranc alleges the following. On June 11, 2017, Defendant Terpin’s phone  
 17 became inoperable because it had been hacked. (ECF No. 1-1 at 2.) The hackers tried  
 18 and failed 11 times to change Terpin’s AT&T password remotely. (*Id.*) The hackers  
 19 eventually changed Terpin’s password and gained access and control to his phone  
 20 number, which allowed them to access his cryptocurrency account. (*Id.*) Impersonating  
 21 Terpin, the hackers convinced Lefranc to send them cryptocurrency, which they  
 22 converted. (*Id.*) AT&T cut off the hackers’ access to Lefranc’s telephone that day. (*Id.*)  
 23 AT&T failed to cancel Terpin’s phone number despite his requests. (*Id.*) Terpin learned  
 24 that an AT&T employee had created an imposter phone and did a sim card swap to gain  
 25 access to his phone number, so he filed a lawsuit. (*Id.*)

#### 26 **B. Analysis of Claims**

27 Based on the allegations summarized above, Lefranc appears to sue Terpin,  
 28 AT&T, Las Vegas Justice Court, and Elko Sheriff’s Office (ECF Nos. 1 at 1, 1-1 at 4.) He

1 seeks monetary and injunctive relief. (ECF No. 1-1 at 3.) But even liberally construed, the  
2 Complaint does not state any claims under § 1983.

3        “The purpose of § 1983 is to deter state actors from using the badge of their  
4 authority to deprive individuals of their federally guaranteed rights.” *McDade v. West*, 223  
5 F.3d 1135, 1139 (9th Cir. 2000). A defendant may be held liable under § 1983 for violating  
6 a plaintiff’s constitutional rights only if the defendant “committed the alleged deprivation  
7 while acting under color of state law.” *Rawson v. Recovery Innovations, Inc.*, 975 F.3d  
8 742, 747 (9th Cir. 2020). “The determination of whether a nominally private person or  
9 corporation acts under color of state law is a matter of normative judgment, and the criteria  
10 lack rigid simplicity.” *Id.* (cleaned up). The Supreme Court has developed four different  
11 tests to aid courts in identifying state action. See *id.* But “[a]t bottom, the inquiry is always  
12 whether the defendant has ‘exercised power possessed by virtue of state law and made  
13 possible only because the wrongdoer is clothed with the authority of state law.’” *Id.*  
14 (quoting *West v. Atkins*, 487 U.S. 42, 49 (1988); *United States v. Classic*, 313 U.S. 299,  
15 326 (1941)).

16        Plaintiff’s allegations as set forth in the Complaint are confusing and vague. The  
17 Complaint includes a document that purports to be a case summary from Lefranc’s  
18 justice-court case, but there are no factual allegations about that case. Nor are there  
19 factual allegations about Las Vegas Justice Court or Elko Sheriff’s Office. There also are  
20 no factual allegations that any defendant violated Lefranc’s federal rights. Lefranc might  
21 be attempting to bring claims against a private corporation and individual for their alleged  
22 role in the theft of his cryptocurrency. But there are no factual allegations that those  
23 defendants acted under color of state law when they did so, which is necessary to bring  
24 a claim under § 1983.

25        It does not appear that Lefranc could cure the Complaint’s fundamental defects by  
26 pleading additional facts. Thus, the Court will dismiss the entire Complaint without  
27 prejudice and without leave to amend in this § 1983 action. Lefranc’s IFP application is  
28 denied as moot.

1 **IV. CONCLUSION**

2 It is therefore ordered that the Complaint (ECF No. 1-1) is dismissed without  
3 prejudice and without leave to amend in this § 1983 action for failure to state a colorable  
4 claim for relief.

5 It is further ordered that Lefranc's application to proceed *in forma pauperis* (ECF  
6 No. 1) is denied as moot.

7 The Clerk of Court is directed to enter judgment accordingly and close this case.  
8 No other documents may be filed in this now-closed case. If Lefranc wishes to bring  
9 claims against private corporations or individuals who are not state actors, he must file a  
10 complaint in a new case and either pay the filing fee or apply for *in forma pauperis* status.

11 DATED THIS 2<sup>nd</sup> Day of January 2025.



12  
13 MIRANDA M. DU  
14 UNITED STATES DISTRICT JUDGE  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28